

based. The borrower must give the tenant appeal rights under subpart L or part 1944 of this chapter.

(B) *Reassignment of RA.* Rental assistance will be reassigned in accordance with paragraph XII of exhibit E to subpart C of part 1930 of this chapter.

(v) *Rental assistance in excess of contract.* When rental assistance is advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) *Unauthorized grant assistance.* (i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form FmHA or its successor agency under Public Law 103-354 451-2, "Schedule of Remittances," as a "Miscellaneous Collection for Application to the General Fund." For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to §1951.668 (a)(6).

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

(5) *Cases where recipient has both authorized and unauthorized loans outstanding.* When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regula-

tions in effect for an authorized loan of its type.

(b) *Inactive borrower.* When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the exhibit A (available in any FmHA or its successor agency under Public Law 103-354 office) letter according to §1951.657. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years.

(2) Take the best mortgage obtainable to secure the note.

[50 FR 12996, Apr. 2, 1985, as amended at 51 FR 11563, Apr. 4, 1986; 58 FR 38926, July 21, 1993]

#### §§ 1951.662-1951.667 [Reserved]

#### § 1951.668 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case or unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Only the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form FmHA or its successor agency under Public Law 103-354 1951-12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form FmHA or its successor agency under Public Law 103-354 1951-52, "MFH Record Adjustment—Audit Claim," according to the FMI to advise the Finance Office. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. "Loan" as used in this section refers to an account with an active borrower unless specified as "inactive."

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(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA or its successor agency under Public Law 103-354 1944-9, in accordance with the FMI. Forms FmHA or its successor agency under Public Law 103-354 1951-12 and 1951-52 will reflect the amount and the Schedule Number from Form FmHA or its successor agency under Public Law 103-354 1944-9.

(ii) *Continuation with loan on existing terms.* When continuation with the loan on the existing terms is approved according to §1951.661 (a)(1)(ii), the District Director will submit Form FmHA or its successor agency under Public Law 103-354 1951-52 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on an entire loan is changed, Form FmHA or its successor agency under Public Law 103-354 1951-52 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will thereafter be treated as an authorized loan.

(3) *Unauthorized interest credits and/or rental assistance.* Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of §1951.661. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and

December of each year for inclusion in the OIG report.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, Form FmHA or its successor agency under Public Law 103-354 1951-52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to subpart G of part 2033 (available in any FmHA or its successor agency under Public Law 103-354 State or District Office).

(5) *Liquidation not initiated.* Cases in which Liquidation has not been initiated because of the provisions of §1951.658 (e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to §1951.661 and this section of this subpart, and the adjustments will be reflected on Form FmHA or its successor agency under Public Law 103-354 1951-52. In this instance only, account adjustments will be made even though the recipient does not sign Form FmHA or its successor agency under Public Law 103-354 1951-52 and any related documents.

(6) *Unauthorized grant assistance.* When grant funds are to be repaid as provided in §1951.661(a)(4) the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) *Establishment of account for inactive borrower.* When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Forms FmHA or its successor agency under Public Law 103-354 1951-12 and 1951-52 will be completed according to the FMIs. The Finance Office will establish

the account according to the terms indicated on Form FmHA or its successor agency under Public Law 103-354 1951-52.

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraph (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of

this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit case; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form FmHA or its successor agency under Public Law 103-354 451-26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form FmHA or its successor agency under Public Law 103-354 1951-13, "Change in Interest Rate," will be completed according to the FMI and executed by the borrower. Form FmHA or its successor agency under Public Law 103-354 1951-521 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iii) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1)(i) of this section will be serviced according to subpart B of part 1965 of this chapter.

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(c) *Collection of unauthorized assistance.* Collection of unauthorized assistance will be made in accordance with the appropriate sections of subpart K of part 1951 of this chapter. If full prepayment of an MFH loan is required, the prepayment will be accepted in accordance with the requirements of subpart E of part 1965 of this chapter, and appropriate restrictive-use provisions, if applicable, will remain in the deeds of release.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

**§ 1951.669 Exception authority.**

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

**§§ 1951.670-1951.699 [Reserved]**

**§ 1951.700 OMB control number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0104.

**Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs**

SOURCE: 50 FR 13000, Apr. 2, 1985, unless otherwise noted.

**§ 1951.701 Purpose.**

This subpart prescribes the policies and procedures for servicing Commu-

nity and Business Program loans and/or grants made by Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by the FmHA or its successor agency under Public Law 103-354 to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

[52 FR 38908, Oct. 20, 1987]

**§ 1951.702 Definitions.**

As used in this subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability of foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Finance assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has (have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest